

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Inventor: Wei Zhan Hang

Art Unit: 3637

Appl. No.: 10/630,948

Confirmation No. 1775

Filed: July 29, 2003

Examiner: A, Phi Dieu Tran

Title: Ceiling Paneling System

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In connection with the Notice of Appeal filed herewith, Applicant respectfully requests review of the outstanding rejections prior to the filing of an Appeal Brief, in accordance with the Pre-Appeal Brief Conference Program. Applicant respectfully submits that review is proper as the rejections are based on a clear factual error, resulting in a clear legal deficiency, as discussed in the Remarks below.

REMARKS

Claim 7, the only pending independent claim, stands rejected under 35 U.S.C. §103(a) over U.S. Patent No. 4,736,564 to Gailey in view of U.S. Patent No. 3,246,074 to Neumann et al. (Neumann). Pending claims 8, 9 and 11, depending from claim 7, also stand rejected over combinations of Gailey and Neumann.

Applicant respectfully submits that reliance on Neumann is misplaced because such reliance is based on a clear factual error. Contrary to unsupported statements in

the Final Office Action dated April 17, 2007, Neumann does not disclose panels with flanges. Thus, Neumann cannot disclose that "the first channel of the carrier receives therein the first hook shaped flange of the one panel of the pair of panels and the second channel of the carrier receives the second flange of the other panel of the pair of panels." (pages 2-3, Final Office Action dated April 17, 2007).

The Final Office Action refers to Fig. 5 of Neumann as disclosing an arm of a carrier. As shown in perspective in Fig. 3, this structure is a U-shaped housing 30 that includes lower flanges 33 and 34. However, the Final Office Action ignores or fails to appreciate Figs. 7 and 8, which illustrate the housing 30 in use. This results in clear factual errors regarding the operation of the channels (grooves) 36 and the asserted existence of panels with flanges in Neumann.

Specifically, Fig. 7 illustrates the housing 30 installed in a plaster ceiling 81 (not between panels), with the flanges 33, 34 of the "carrier arm" providing a frame. (Col. 4, Ins. 14-18.) As shown, the housing 30 is fitted into the plaster ceiling 81 such that mounting is flush. Although the channels 36 of the flanges 33, 34 receive material of the plaster ceiling 81, the plaster ceiling 81 does not include panels or flanges as asserted in the Final Office Action.

Fig. 8 illustrates the housing 30 installed in a "dry type" ceiling including panels (tiles) 82. The edges of the panels 82 are positioned between the lower flanges 33, 34 and upper flanges 38 of the "carrier arm." (Col. 4, Ins. 18-21.) Although the panels 82 are supported by the flanges 33, 34, the panels 82 do not include flanges as asserted in the Final Office Action. Moreover, in this embodiment of Neumann specifically directed

to panels, nothing is received by the channels 36 of the flanges 33, 34. Thus, the structure of Neumann operates similarly to the structure of Gailey when installed in a ceiling including panels, with the panels merely resting on the flanges.

Thus, there is no factual basis for the assertion in the Final Office Action regarding Neumann disclosing that "the first channel of the carrier receives therein the first hook shaped flange of the one panel of the pair of panels and the second channel of the carrier receives the second flange of the other panel of the pair of panels." As discussed above, Neumann does not disclose panels with flanges, and specifically teaches use of panels without flanges and without anything being received by the channels 36 of the flanges 33, 34. Therefore, Applicant respectfully submits that the Final Office Action relies on a clear factual error in rejecting the claims.

This factual error leads to a clear legal deficiency for rejecting the claims as obvious over Gailey and Neumann. To establish prima facie obviousness of a claim, all the claim limitations must be taught or suggested by the prior art. (MPEP §2143.03.) Because Neumann does not remedy the admitted deficiencies of Gailey with respect to the structure recited in independent claim 7, prima facie obviousness of the pending claims has not been established. In other words, neither Gailey nor Neumann teaches or suggest an "arm including a first upwardly-open U-shaped channel between an upstanding free end and an upstanding locking lug and a second upwardly-open U-shaped channel between the locking lug and the vertically-extending member, the first channel of the carrier receives therein the first hook shaped flange of one panel of the

pair of panels and the second channel of the carrier receives therein the second flange of the other panel of the pair of panels to attach the pair of panels to the carrier."

Further, the reasoning asserted in the Final Office Action for modifying Gailey's structure rests completely on the factual error discussed above. Specifically, the Final Office Action asserts that the proposed modification would have been obvious "because it allows for the easy secure attachment of the panels to the carrier as taught by Neumann et al." However, Neumann does not teach "secure attachment" via the channels 36, but only receiving panels between the lower flanges 33, 34 and the upper flanges 38. Any "secure attachment" taught by Neumann would thus suggest modifying Gailey's structure to include upper and lower flanges, not grooves to engage non-existent panel flanges.

Thus, as the asserted reasoning for modifying Gailey's structure is erroneous, Applicant respectfully submits that proper reasoning for modifying Gailey's structure constitutes an omission of an essential element for a prima facie rejection of the pending claims.

In view of the foregoing, Applicant respectfully submits that clear factual and legal deficiencies in the rejections warrant withdrawal of the rejections. Accordingly, Applicant respectfully requests the rejections based on Gailey and Neumann be withdrawn.

Upon withdrawal of the rejections based on Gailey and Neumann, there being no other objections or rejections of the application, Applicant respectfully submits the application is in condition for allowance and respectfully requests such action.

Dated this 17th day of July 2007.

Respectfully submitted,

DORSEY & WHITNEY LLP


Klifton L. Kime, Reg. No. 42,733
USPTO Customer No. 20686
Tel: (303) 352-1147
Fax: (303) 629-3450

KLK/hs